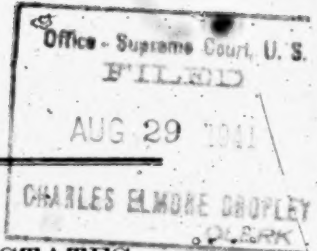


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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 280

■
ROSCO JONES,
Petitioner

v.

CITY OF OPELIKA,
Respondent

■
On Petition for Writ of Certiorari
to the Supreme Court of Alabama

PETITIONER'S REPLY BRIEF

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Attorneys for Petitioners

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In answer to the Respondent's Argument, pages four and five of Respondent's Brief in Opposition, under the heading "Jurisdictional", we should like to point out that the judgment of conviction rendered and entered against the petitioner by the Circuit Court of Lee County, Alabama, was affirmed by the Supreme Court of the State of Alabama by reversing the judgment of the Court of Appeals of Alabama. The judgment of the Court of Appeals

of Alabama disposed of the whole case on the merits. The judgment of the Supreme Court of Alabama likewise disposed of the whole case on the merits and directed the Court of Appeals to enter a judgment affirming the Circuit Court's judgment instead of reversing the judgment of conviction and setting it aside, as was done by the Court of Appeals.

Therefore the judgment of the Supreme Court of Alabama directed the Court of Appeals what judgment should be entered and left nothing to the judicial discretion of that Court or the trial court. The courts below have nothing to do but to execute the judgment already rendered.

The cases relied upon by the Respondent are all judgments or decrees of reversal granting leave for further proceedings of the trial court or inferior court. Such judgments are not final in such cases because something yet remained to be done to complete the litigation. In the case at bar nothing remains to be done to complete the litigation and no jurisdictional discretion is required of the courts below to carry out the judgment of the Supreme Court of Alabama. The inferior courts are required only to perform the ministerial act of entering the directed judgment and executing judgment that has heretofore been rendered against the petitioner and thereby to carry the same into execution.

In this respect the case at bar is distinguished from the cases quoted from and cited by respondent.

In this connection, we make reference to *Rio Grande Railway Co. v. Stringham*, 239 U. S. 44, 47; *Board of Com-*

missioners v. Lucas, 93 U. S. 108; *Bostwick v. Brinkerhoff*, 106 U. S. 3; *Mower v. Fletcher*, 114 U. S. 238.

We therefore submit that the judgment of the Supreme Court of Alabama is a final judgment reviewable by this Court, under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)].

The other matters discussed in Respondent's Brief are fully covered in the Petition for Writ of Certiorari.

Confidently submitted,

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